



Securities and Exchange Commission of Pakistan

Securities Market Division
Public Offering and Regulated Persons Department

Ref. No. 1(5)SMD/PRPD/2015

Date: March 17, 2016

Sr. No.	Name	Designation	Address
1	Mr. M. Hanif Y. Bawany	CEO/Director	Bawany Air Products Limited 16-C, Nadir House, 2nd Floor, I.I. Chundrigar Road, Karachi. Fax-021-32414790, 32411986
2	Mr. Muhammad Ashraf,	Director	
3	Mrs. Momiza Hanif Bawany	Director	
4	Mr. Wali Muhammad M. Yahya	Director	
5	Mr. Wazir Ahmed Jegozai	Director	
6	Mr. Zakaria A. Ghaffar	Director	
7	Mr. Siraj A. Kadir	Director	
8	Bawany Management (Pvt.) Limited,		16-C, Nadie House, 2 nd Floor I. I. Chundrigar Floor, Karachi Fax No. 021-32004400-3

Subject: Order in respect of Show Cause Notices dated July 5, 2014 Bearing Number 1(7) BAPL/MSW/SMD/2010

Dear Sir/Madam,

Please find enclosed herewith a copy of order in the title matter for your record and necessary action.

Yours truly,

Muhammad Farooq
Additional Director (PRPD)

ORC

**Before the Commissioner (SMD)**

In the matter of Show Cause Notice issued section 15E and section 22 of the Securities and Exchange Ordinance, 1969, to Directors of Bawany Air Products limited and Bawany Management (Pvt.) Limited

Date of Hearing:

- (i) September 23, 2014,
- (ii) January 22, 2015 and
- (iii) September 03, 2015

Present at Hearing:

Representing the Respondents:

- (i) Mr. Hanif M. Bawany, Chief Executive, Bawany Air products Limited
- (ii) Mr. Rizwan Manai, Consultant, Rizwan Manai Associates
- (iii) Mr. Faisal Bashir, Advisor to Chief Executive, Bawany Air products Limited

Assisting the Commissioner (SMD)

- (i) Mr. Nasir Askar, Director (PRPD-SMD)
- (ii) Mr. Muhammad Farooq Bhatti, Additional Director, (PRPD-SMD)
- (iii) Mr. Amir Saleem, Joint Director, (SSED-SMD)

ORDER

This order shall dispose of the proceedings initiated by the Securities and Exchange Commission of Pakistan (the "**Commission**") through four different Show Cause Notices ("**Notices**") all dated May 5, 2014 against the following persons collectively called hereunder **Respondents**:

S. No.	Name	Description
(i)	Mr. M. Hanif Y. Bawany (Respondent-I),	Director of Bawany Air Products Limited (Company) and Chief Executive Officer of Bawany Management (Pvt.) Limited (Respondent III)
(ii)	Mr. Wali Mohammad M. Yahya, (Respondent-II),	Director of the Company and the Respondent III.
(iii)	Bawany Management (Pvt.) Limited (Respondent-III)	Shareholder of the Company.
(iv)	Mrs. Momiza Hanif Bawany (Respondent-IV)	Director of the Company
(v)	Mr. Wazir Ahmed Jomezai (Respondent-V)	Director of the Company
(vi)	Mr. Siraj A. Kadir (Respondent-VI)	Director of the Company
(vii)	Mr. Mohammad Ashraf (Respondent-VII)	Director of the Company
(viii)	Mr. Zakaria A. Ghaffari (Respondent-VIII)	Director of the Company

2. The Notices were issued to the Respondents for alleged violations, as mentioned against each hereunder:



Notice No.	Notice Served to	Notice Served u/s	Notice served for alleged violation of
1(7)BAPL/MSW/SMD/2010-415, 416 and 417 (Notice-I)	Respondents I , II and III	Section 15E of the Securities and Exchange Ordinance, 1969 (Ordinance)	Section 15 A of the Ordinance
1(7)BAPL/MSW/SMD/2010-418 and 419 (Notice-II)	Respondents I and II	Section 15E of the Ordinance	Section 15 E(3) of the Ordinance
1(7)BAPL/MSW/SMD/2010-428 to 430 (Notice-III)	Respondents I , II and III	Section 22 of the Ordinance	Section 15D (5) of the Ordinance and clause 16(6) and 35(xxiii) of listing regulations of Pakistan Stock Exchange formerly Karachi Stock Exchange Limited ("PSX").
1(7)BAPL/MSW/SMD/2010-421 to 427 (Notice-IV)	Respondents I, II, IV to VIII	Section 22 of the Ordinance	S.R.O. 143(I)2012 dated 5/12/2012 and Form 7 of Correspondence Manual of PSX.

Background of the Case:-

3. Brief facts of the case are that on perusal of trading data of PSX, it was observed that the Respondent-III had traded during the period from July 1, 2013 to February 28, 2014 ("**Review Period**"), in the shares of the Company in the following manner:

Respondent-III trading in Company's shares during the Review Period				
Date	Shares Bought	Average Buying Price	Shares Sold	Average Selling Price
2013-10-23			14,000	15.53
2013-10-24			12,500	14.54
2013-12-11			326,000	15.28
2014-01-02			90,000	16.00
2014-01-06			43,500	16.30
2014-01-09			36,500	17.40
2014-01-29	1,500	15.61	653,000	15.30
2014-01-30			30,000	15.30
2014-02-03			200,000	15.25
Grand Total	1,500	15.61	1,405,500	15.41

4. The Respondent-III during the Review Period sold 1.406 million or 86.34% of its shareholding. Meanwhile, the Company announced financial results for the (i) year ended June 30, 2013 (**Year-2013**) and (ii) 1st quarter ending on September 30, 2013 (**1st Quarter-2014**) on October 31, 2013 and November 1, 2013 respectively. Review of the said financial results revealed that one of the Company's plants got damaged and the

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plant had to be partially closed. Consequently, the Company incurred significant losses during the last quarter of financial Year-2013 and 1st Quarter-2014. The information "closure of plant" was *prima facie* an "**Inside Information**" in terms of section 15B of the Ordinance. Being Inside Information, pursuant to provisions of Section 15D(1) of the Ordinance read with S.R.O. 143/(I)2012 dated December 5, 2012 (**Notification of 2012**), it was required to be disclosed to the Commission and made public immediately on the occurrence of the event. But, the Company neither reported it to the Commission nor made it public.

5. It was further observed that Respondent-III, *prima facie*, made aforesaid trading based on abovementioned inside information, which was passed on by Respondents-I and II.

Initiation of proceedings by the Commission:

6. The Commission took cognizance of the aforesaid contraventions and issued
- i) Notice-I to Respondents I, II and III calling upon them to explain through written reply along with documentary evidence, if any, as to why action may not be taken against them for indulging in insider trading in violation of section 15(A) of the Ordinance.
 - ii) Notice-II calling upon the Respondents I and II to explain through written reply along with documentary evidence, if any, as to why action may not be taken against them for passing on inside information to Respondent III allegedly in violation of section 15E(3) of the Ordinance.
 - iii) Notice III calling upon the Respondents I, II and III to explain through written reply along with documentary evidence, if any, as to why action may not be taken against them for alleged violation section 15D (5) and clause 35 of listing regulations of PSX (for non-filing of disclosure of transactions conducted by Respondent III from October 23, 2013 to January 9, 2014).
 - iv) Notice IV calling upon the Respondents I, II and IV to VIII to explain through written reply along with documentary evidence, if any, as to why action may not be taken against them for failing to immediately disclose material information/price sensitive information as well as failure to convey information to PSX about meeting in progress of BOD held on October 31, 2013.
7. Respondent-I vide letter dated June 23, 2014 filed reply to the Notices on behalf of all Respondents and contended that they have not violated the regulatory framework on the subject matter including section 15A of the Ordinance. He expressed his intention to be heard in person for explaining the case in detail. The matter was scheduled for hearing before then Director/HOD (SSED) on July 24, 2014, which on the request on Mr. Rizwan Manai (the "**Representative**") was adjourned and rescheduled for September 23, 2014, which was attended by the Representative, without proper authorization/power of

attorney. The Representative was asked to furnish authority letter and various documents including detail of monthly sales of the Company. The matter was again fixed for hearing on December 5, 2014, which was later on adjourned and rescheduled for January 22, 2015. The Respondent-1 along with Representative appeared before the then Director/HOD(SSD) on January 22, 2015. Before the matter could be concluded by the Director/HOD, due to internal administrative arrangements of the Commission, the instant case along with some other pending adjudication matters (wherein notices were issued by Supervision and Surveillance Department of Securities Market Division) was passed on to the undersigned.

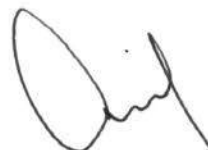
8. In order to conclude the proceedings, an opportunity of hearing was provided on July 13, 2015. However, the same was adjourned on the request of the Respondents and rescheduled for September 03, 2015. On the given date, the Representative along with Respondent-I and Mr. Faisal Bashir, Advisor to Respondent-I (collectively called hereunder "**Authorized Representatives**") appeared before me. At the beginning of the hearing, the Authorized Representatives stated that previously they have appeared before Director/HOD twice and explained the case in detail. They were informed that due to internal administrative arrangement, the instant matter along with all pending adjudication cases have been assigned to Commissioner (SMD). All documents/submissions made by the Respondents before the Director/HOD(SSD) are part of the record and would be considered accordingly. The Authorized Representatives contended that no violation of any section of Ordinance has been committed as neither the damage to the component was price sensitive information nor the shares were sold by Respondent-III on the basis of any inside information. The argument presented in support of the aforesaid contentions in writing during the entire course of proceedings and contended verbally by the Authorized Representatives be summarized as under:-

- i. *The disposal of shares was made with the view to cope with liquidity crisis in Company. The proceeds of disposal was planned to utilize to provide as a loan to Company. Therefore, the question to establish inside information or price sensitive information as a basis to dispose of the shares does not arises. The funds so realized have started to use for the needs of Company in accordance with the plan. Our said claim will be further confirmed to your good office through review of quarterly accounts for the period ended 31 March 2014 and annual audited accounts for the year ending 30th June 2014.*
- ii. *The loss in last quarter of financial year 2013 and 1st quarter of 2014 is mainly attributable to adversities in cost components, particularly, the energy cost and pressure on selling prices. The pressure on selling prices is due to the reason of massive capacity expansion by one of the competitor. Further, the non availability of input sales tax to ship breaking industry and steel re-rolling and steel melting industries causing to induce them to purchase the chemical gases from unorganized sector. Therefore, the experienced cut throat competition against unorganized and undocumented entrepreneur and availability of surplus capacity has left no choice for documented sector, except to lower the prices, in order to*



survive.

- iii. Further to above, the damaged component has not actually caused the negative performance rather it is the pressure on selling prices which has mainly caused the situation. Due to the fact that the management of the company has experience of decades in manufacturing and sale of chemical gases, the quantitative sales almost managed to maintain even due to partial functioning of the plant through placing the reliance on semi-finished product, however, factors beyond our controls i.e. pressure on selling prices and adversities in cost components caused for negative performance.
- iv. In the scenario where quantitative sales was able to manage through placing reliance on processing and sale of semi-finished products and even though the matter of damaged components and non-functionality of the plant was properly disclosed in annual accounts of 2013 and 1st and 2nd quarter accounts of 2014, the market price of the shares was not impacted due to the reason. The claim can be substantiated with reference to situation that the prevalent price on 31st December 2013 was Rs.16.49 per share as compared to Rs. 14.65 per share on 31st October 2013 (one day before announcement of annual results of 2013 and 1st quarterly accounts of 2014). Even with the disclosure of damaged part in the respective accounts, subsequent movement in share price depicting positive sign, which left no choice for us except to conclude that the information about damage of the component is not an actually the price sensitive information.
- v. Your notice has very well taken the note 1.2 to half yearly accounts for the period ended 31st December 2013, as regards disclosure of restoration of production capability after necessary repair of the damaged part but even though the share price of Rs. 15.15 per share, on the day of announcement of half yearly results and the restoration of production capability of the plant, move down to Rs 11 per share on 7th March 2014. When the non functionality of the plant was announced in annual accounts of 2013 and in 1st quarterly accounts of 2014, the share price rather depicted upward trend and when the restoration of production capability was announced in half yearly accounts of 2014 then the share price rather depicted downward trend. Such trends and movements in share prices are very well to justify our claim that the damage of the part is not price sensitive in formation.
- vi. The decrease in price of the shares is subsequently experienced in the scenario where the plant was operational and keeping in view the situation, we have no choice except to conclude that the decrease in price is mainly due to sentiments of stock market investors about our sectors and inference can be drawn, in this regard, with reference to movement in share prices of our competitors viz. Linde Pakistan Ltd. and Ghani Gases Ltd.
- vii. As regards to your concern, in the notice, about disclosure of March 10, 2014 for



shut down of the plant, it is to submit that the repairing earlier ensured through local resources proved as futile exercise and therefore the situation caused for once again, the shutdown of the plant. In order to ensure long lasting continuity of the plant, after the repair, the company has hired a foreign engineer Mr. Langner for necessary advice to appoint suitable contractors to ensure the repairing and therefore the re-commissioning the project.

9. In response, the departmental representative stated that the plant of the Company was damaged in April-May, 2013, but the Company pursuant to provisions of Section 15 D of the Ordinance read with S.R.O. 1431(I)/2012 dated December 5, 2012 (**Notification of 2012**), filed disclosure in this regard with PSX in March 2014. While, the financials circulated through PUCARS did contain the information of closure of plant, therefore, this information became public, when the Company communicated the same to PSX on March 10, 2014. The Departmental Representative further contended that since prior to March 10, 2014, the information of "partial closure of plant" was non-public, therefore, the Respondent III has dealt in the securities, in contravention of section 15 A of the Ordinance, on the basis of inside information passed on by Respondent I and Respondent II.

Framing of issues:-

10. After hearing the Authorized Representatives on behalf of the Respondents, departmental representative and going through the available record, in my opinion, the following main issues are needed to be addressed in the instant matter:

- a) When did the Company make the information of "partial closure of plant" public?
- b) When this information was actually required to be made public, under the regulatory framework, if required?
- c) Whether or not the Respondents were insiders of the Company in terms of section 15(C) of the Ordinance?
- d) Whether or not the "partial closure of plant" was "inside information" in term of regulatory framework on the subject matter or not.
- e) Whether or not the Respondents I, II and III have indulged in insider trading in violation of section 15A and section 15 E(3) of the Ordinance, as alleged in Notice I and Notice II.
- f) Whether or not the Respondents have acted in violation of the requirement of the Section 15D (5) and listing regulations of PSX, as alleged in Notice III
- g) Whether or not the Respondents have acted in violation of the requirement of the Notification of 2012 and PSX's Correspondence Manual, as alleged in Notice IV.

10. Now I proceed to address the abovementioned issues in seriatim:-



- a) **The issue of when did the Company make public the information of "partial closure of plant?"** The plant was damaged during April-May, 2013. The Company disclosed the said information in its financial results for the financial year ended on June 30, 2013 and 1st Quarter 2014 (ended on September 30, 2013). The Company has disclosed the aforesaid information in its financial results in the following manners:-

Source document	Text of disclosure made by the Company
Note 1.2 to Accounts for period ended on June 2013 (Announced on October 30, 2013)	<p>During the last quarter of the current year, due to high electricity surge /jerks in power supply, one of the components of the Company's existing plant was damaged and the plant had to be partially closed. Due to this partial closure of plant, the production has suffered <u>but in the meantime, the Company has managed to purchase semi-finished product</u> from the market and then processed it from its plant to sell and meet the demand of its customers, however, it is earning lower margins on these sales.</p> <p><u>Statutory Auditors disclosure</u></p> <p>We draw attention to note 1.2 to the financial statements related to the status of Company's plant and machinery this matter and the efforts being made by management to restore full production. Our opinion is not qualified in respect of this matter.</p>
Quarterly Review for Quarter ended on September 30, 2013 (Announced on November 1, 2013)	<p>----- Power outages have become a normal phenomenon and the jerks / fluctuations in electricity supply have caused major damage to the sophisticated plant and machinery.</p> <p>Your Company also fell victim to this problem and owing to continuous surges in electricity supply, certain key components of one of our plants got damaged. The plant had to be closed down partially till that component is repaired. This has affected the production and consequently the sales have dropped and so did the profit. As against a turnover of Rs. 68.9 million in September 2012, owing to partial closure of one of our plants, the turnover for September 2013 quarter amounted to Rs. 36.7 million. This decrease in revenue has led to a loss before tax of Rs. 7.6 million. Similarly, earning per</p>

	share was negative by Rs. 1.04. The main decrease of revenue was in the month of July and August. The component has been repaired successfully and it is in process of being installed. <u>The management expects that within next fortnight, the plant will be in full operation and INSHAALLAH the Company will be able to recover the lost revenues.....</u>
Note 1.2 to the Accounts for half Year-ended on December 31, 2013 (Announced on February 27, 2014)	<p>"Due to partial closure of plant on account of damage to one of the component of plant and machinery during the financial year ended June 2013, the production had suffered which resulted in lower sales and margins. <u>However, subsequent to the balance sheet date and by the time accounts are being approved by the Board the plant has become fully operational.</u>"</p> <p>Statutory Auditors disclosure</p> <p><i>"... Subsequent to the Balance Sheet date and before the signing of our review report, the plant has become operational as disclosed in the note 1.2 to the interim financial information..."</i></p>
Disclosure filed with PSX on March 10, 2014	This is to inform you that one of the manufacturing units have been shut down due to breakdown of its critical part.

Disclosure made by the Company, in this regard, may be summarized in chronological order as under:-

- On October 31, 2013 disclosed that during the last quarter of the Financial Year 2013, one of the components of the Company's existing plant was damaged and the plant had to be partially closed.
- On November 1, 2013 (in quarterly accounts as on September 30, 2013) disclosed that the component has been repaired successfully and it is in process of being installed.
- On February 27, 2013 (in half yearly accounts as on December 31, 2103) disclosed that by the time accounts are being approved by the Board the plant has become fully operational.
- On March 10, 2014, the Company intimated to PSX that one of the manufacturing units have been shut down due to breakdown of its critical part.

I am of the view that financial results of a listed company are public documents resultantly, any information disclosed in financial results is deemed to be made public from the date of circulation of the financial results to the members of the company and the stock exchange(s). In the instant case, the Company has disclosed the under reference inside information in its financial results approved by the Board of Directors on October 31, 2013. I have also noticed that financial results sent to PSX on October 31, 2013 comprised only profit and loss account and Balance Sheet as at June 30, 2013. The aforesaid alleged "inside information" was not part of documents which was made public through PUCARS on October 31, 2013. In fact, the said information was part of printed accounts which under the regulatory requirements were sent to all members of the Company and PSX separately. In response to a query PSX intimated that annual accounts for the year ended June 30, 2013 and first quarter ended on September 30, 2013 were provided to the stock exchange on November 11, 2013 and November 12, 2013 respectively. So, in my opinion owing to disclosure in annual accounts the information about incurring of loss became public on October 31, 2013 while, the inside information regarding "partial closure of plant" stood public on November 11, 2013.

- b) **When this information was actually required to be made public?** The plant was partially damaged during March-April 2013. The Company pursuant to the requirement of Section 15D(1) of the Ordinance read with the Notification communicated this information to PSX on March 10, 2014. But, in fact, a listed company in terms of section 15D(1) of the Ordinance read with the Notification 2012 is required to disclose inside information immediately upon its occurrence, in the prescribed manner. However, in the instant case the Company disclosed this information in financial results announced on October 31, 2013 and later on communicated to PSX on March 10, 2014.
- c) **Whether the Respondents were insiders of the Company in terms of section 15(C) of the Ordinance?** Bawany Air Products Limited is a public listed Company. Respondents-I, and Respondents II, IV to VIII are its Chief Executive and Directors respectively. Respondent-I also holds 16.30% shares of the Company. Thus pursuant to section 15C (1) of the Ordinance, the Respondents I, II IV to VIII were insider of the Company. Respondent-III before aforesaid sale of shares was a substantial shareholder having 21.67% shares in Company.
- Besides, Respondent-III is a private company. The Respondents I and II are only its two members and each of them holds 500 shares, i.e., 50% each of the paid-up capital of Respondent-III. Moreover, Respondent-I and II are Chief Executive and director of the Respondent-III respectively. Thus, the Respondents were connected with each other.
- d) **Whether the "partial closure of plant" was "inside information"** The Authorized Representatives have contended that information "closure of plant" was not a price



sensitive inside information. The plea has been analyzed in the light of regulatory framework contained in section 15D(1) read with Notification of 2012. The term "inside information" has been defined in section 15B of the Ordinance. The relevant text of the section is reproduced hereunder:-

Section 15B. *Inside information.*—(1) The expression "inside information" means,

(a) information which has not been made public relating, directly or indirectly, to listed securities or one or more issuers and which, if it were made public, would be likely to have an effect on the prices of those listed securities or on the price of related securities;

In the event of occurrence of any "inside information" the listed companies pursuant to section 15D(1) of the Ordinance are required to make it public. The relevant text of section 15D(1) is reproduced hereunder:-

Section 15D. *Listed companies responsibilities to disclose inside information.*—(1) Listed companies shall inform the public, in the manner specified by the Commission, as soon as possible of inside information which directly concerns the listed securities.

The manner mentioned in section 15D(1) has been prescribed by the Commission through aforesaid Notification issued by the Commission in exercise of powers conferred by section 40B of the Securities Act, 1997 read with section 15D of the Ordinance.

The said Notification of 2012 *inter alia* provides that persons who possess inside information shall immediately file with the Commission and communicate the same simultaneously to the stock exchange(s) on which these are listed, the detail of the inside information and ancillary matters in the prescribed form, upon the occurrence of any one or more of the events, which may effect the price of a listed security. The said Notification further prescribes that the word "immediately" implies that the information is required to be disclosed before the commencement of next trading day.

Besides, the Notification narrates some examples of possible inside information concerning the companies which inter include information related to "*change in performance, or the expectation of the performance of the business*".

Thus, the conjunctive reading of section 15B, section 15D of the Ordinance and aforesaid Notification of 2012 specifies that the information which may affect the price and or performance of a listed security is "inside information" and the same is required to be reported to the Commission and to be made public through stock exchange immediately upon its occurrence.

After explaining the regulatory framework, I proceed to address the issue in hand. The primary contention of the Authorized Representatives is that information of closure of plant was not inside information, as it neither affected the price of shares of the company when the information of closure plant was disclosed in Annual Accounts as well as First Quarter announced on October 31, 2013 and November

01, 2013 respectively nor it affected the performance of the Company. In order to arrive at decision, I shall discuss the following two aspects of the issue i.e. whether or not the event of closure of plant has affected:

- (i) The market price of the shares of the company, when it became public on November 11, 2013, and
- (ii) The performance of the Company.

It is worth mentioning that in the light of aforesaid legal framework; the non-public information which may affect the price of the security and or performance of the company is required to be classified as "inside information" and is required to be disclosed immediately. Before proceeding further, it is clarified that "effect on price or performance" is not necessary/primary condition as the regulatory framework, uses the words "likely to have an effect on the prices" instead of "shall have an effect on the prices". Nevertheless, I discuss here the reaction of market, when the information regarding incurring of loss and damage/closure of plant was disclosed in aforesaid financial statements. Trading/price history of the Company from October 25, 2013 to November 29, 2013 is given hereunder:-

DATE	LDGP	OPEN RATE	HIGH RATE	LOW RATE	CLOSING RATE	TURNOVER
October 25, 2013	14.98	14.98	15.89	14.25	14.25	4,000
October 28, 2013	14.25	14.25	14.7	13.7	14.65	4,500
October 30, 2013	14.65	14.65	14.65	13.66	14.65	1,000
November 04, 2013	14.65	13.65	13.65	13.65	13.65	500
November 05, 2013	13.65	12.65	12.65	12.65	12.65	1,500
November 06, 2013	12.65	11.65	11.65	11.65	11.65	1,500
November 07, 2013	11.65	10.65	12.5	10.65	10.65	155,500
November 08, 2013	10.65	10.69	10.69	10.69	10.69	500
November 11, 2013	10.69	10.69	11.3	10.69	10.9	32,000
November 12, 2013	10.9	10.8	11	10.8	11	4,000
November 13, 2013	11	11.1	11.85	11.1	11.51	34,500
November 18, 2013	11.51	12	12	11.35	11.35	1,000
November 19, 2013	11.35	11.5	11.55	11.5	11.55	2,000
November 20, 2013	11.55	11.55	12	11.55	11.75	32,500
November 25, 2013	11.75	11.5	11.7	11.5	11.7	10,000
November 26, 2013	11.7	11.75	12.06	11.75	12.01	85,500
November 27, 2013	12.01	12	12	12	12	500
November 28, 2013	12	12	12.05	11.8	12.05	12,500
November 29, 2013	12.05	12.1	12.25	12.1	12.25	8,500

The aforesaid trading history of the Company showed that closing price of the scrip on October 30, 2013 was Rs. 14.65 per share. The Company declared loss on October 31, 2013 which was made public through PUCARS. Subsequent to said announcement, price of the scrip started declining and was Rs. 10.69 on November 8, 2013, as compared to Rs. 14.65 as on October 31, 2013. This represents 27.30% decrease in just one week. But, the financial circulated on October 31, 2013 through PUCARS did not contain the information of "partial closure of plant". The

said information was made public on November 11, 2013, when the PSX received printed financial statements from the Company. But, thereafter, market price of the Company depicted positive trend, apparently because of the reason that on November 1, 2013 (in quarterly accounts as on September 30, 2013, printed copies of which were made available to PSX on November 12, 2013), the Company claimed that the "component has been repaired successfully and it is in process of being installed".

Now I come to the second aspect of the issue i.e. "impact on performance of the Company". It may be noted that the abovementioned Notification *inter alia* narrates various examples of events for guidance to listed companies which are to be classified as "inside information". The first two examples in this regard are information related to "change in performance, or the expectation of the performance of the business".

In the instant case, the Company due to "closure of Plant" suffered loss of Rs. 13.824 million in last quarter (March-June) of Year 2013 as compared to profit of Rs. 2.276 million for the for last quarter of 2012. Thus, the Company suffered loss and admittedly faced liquidity problems. This fact has also been admitted by Respondents in Director's Report presented in annual accounts for the period ended June 30, 2013, approved and announced on October 31, 2013. The relevant extract of the Director's Report is reproduced hereunder:-

Material information

We draw your attention to the last paragraph of auditors report and note 1.2 to these financial statements in which it has been explained that during the last quarter, due to high electricity surge/jerks in power supply, one of the components of the Company's existing plant was damaged and the plant had to be partially closed. Due to this partial closure of plant, the production has suffered but in the meantime, the Company has managed to purchase semi-finished product from the market and then process it from its plant to sell and meet the demand of its customers.

Consequent to above condition, the revenue for the last quarter of the current year was lower than the first three quarters. Further, subsequent to the year end, the Company continued to face operational and financial problems. However, management has been making stringent efforts to repair the component and it is in process of installation. Significant efforts are being made to install the component at earliest so that the plant can resume full operations.

The effect of closure of plant even continued in later period, glimpse of the same may be envisaged from the financial results of next quarter ended on September 2013, and half yearly ended on December 31, 2013, which reflect as under:-

Results of quarter ended on September 2013:-



Description	Financial results (in rupees) for the period ended on	
	September 30, 2013	September 30, 2012
Sales	36,748,835	68,944,097
Profit/(loss)	(7,835,278)	6,064,637
EPS	(1.04)	.81

Results of half year ended on December 31, 2013:-

Description	Financial results (in rupees) for the period of	
	July-Dec. 2013	July Dec. 2012
Sales	77,327,666	128,881,391
Profit/(loss)	(6,524,459)	16,263,754
EPS	(0.87)	2.17

The Company has itself admitted in above given financial results that that closure of plant has affected its performance. So the contention presented by the Authorized Representatives that the "closure of plant" did not affect the performance of the Company could not be supported by the financial data and review/director's reports presented in the aforesaid financial results.

In view of the foregoing, I do not agree with the contention of the Respondents that "partial closure of plant" was not an inside information. I am of the considered opinion that "partial closure of the plant" was inside information in terms of section 15B of the Ordinance, because it has adversely affected the performance of Company, but, the claim made in quarterly account announced on November 01, 2014 that "*component has been repaired successfully and it is in process of being installed*" functioned as positive sentiment, resultantly, the market did not respond negatively.

e) Whether or not the Respondent III has indulged in insider trading on the basis of information passed on by Respondents I and II, as alleged in Notice I and II:-

The three essential ingredients of establishing of an offence of insider trading are that:-

- There must be purchase or sale of shares.
- The person dealing in shares should be insider in term of section 15 C of the Ordinance.
- The information used by person should be inside, non-public and material information, in terms of section 15B of the Ordinance.

In the instance case, the Respondent III has admittedly traded in the shares of the Company. Moreover, it has been established in paras 10(c) and 10(d) of the Order that the Respondents were insiders in terms of section 15C of the Ordinance and the information of "partial closure of plant" was inside information as per the criteria laid down in section 15 B and the aforesaid Notification of 2012. Furthermore, it has also been established in para 10 (a) of the Order that the said "inside information" became public on November 11, 2013, therefore, in my

opinion, the transactions made subsequent to November 11, 2013, do not fulfill the necessary condition, required to be established for the offence of indulging in insider trading. The Respondent III, during the Review Period, allegedly sold 1.4 million shares on the basis of aforesaid "inside information". The available record revealed that out of 1.4 million shares only 26,500 shares were sold before November 11, 2013 i.e. the date, when the news of "partial closure of plant" became public. Hence, only 26,500 shares have been traded in violation of section 15A of the Ordinance, which are negligible portion of the total sale of 1.4 million shares, as alleged in Notices I and II. 26,500 shares were sold at an average price of Rs. 15.41 per share before becoming the inside information public on November 11, 2013. While, the closing price of the Company on November 11, 2013 was Rs. 10.90 per share. Thus, the Respondent has avoided loss of Rs. 119,250/- {26,500 shares multiplied by (average sale rate minus closing price of November 11, 2013)} by indulging in insider trading.

In view of the foregoing, I am imposing a penalty of

- i. Rs 120,000/- (Rupees one hundred twenty thousand) on the Respondent III equivalent to loss avoided by it for indulging in insider trading of 26, 500 shares of the Company, in violation of section 15A of the Ordinance, and
- ii. Rs. 20,000/- (Rupees twenty hundred) each on Respondent I and II for violation of section 15E(3) of the Ordinance.

Further, the Respondents are strictly warned to ensure strict compliance with the regulatory framework, in future. The proceedings initiated through Notice I and Notice II are disposed of accordingly.

f) The issue - whether or not the Respondents I, II, and III have acted in violation of the requirement of the Section 15 D(5) and listing regulations, as alleged in Notice III:-

In Notice III, it was alleged that the following transactions made by the Respondent III from October 23, 2013 to January 9, 2014, were neither reported to Commission nor to PSX, in violation of section 15 D (5) and of the Ordinance and regulation 16(6) and 35(xxiii) of the Listing Regulations of the PSX.

Date	Shares Sold
23-10-2013	14,000
24-10-2013	12,500
11-12-2013	326,000
02-01- 2014	90,000
06-01-2014	43,500
09-01-2014	36,500

In this regard, the Respondents submitted that the transactions under reference could not be reported due to prevailing crisis in the company. It was further contended that bonafide intention of the Respondents could be viewed from the

fact that as and when the management managed to run the company through placing reliance on semi-finished products, the legal obligations (including filing of disclosure with PSX in respect of transactions made from 31/01/2014 to 06/02/2014) were duly discharged. The Respondent assured timely compliance of the regulatory framework on the subject matter, in future and requested to drop the proceedings.

The Respondent has admitted the default alleged in Notice III with the contention that the same was not committed willfully and knowingly. I have reviewed the record of this office and observed the Respondent III has reported the following transaction to the PSX for onward dissemination to all concerned:

Date	No. of shares
31/01/2014	651,500
03/2/2014	30,000
06/02/2014	200,000
Grand Total	881,500

In view of the forgoing and considering the submissions made on behalf of the Respondents, a lenient view of the matter has been taken. Hence, I am not imposing any penalty on the Respondents for the violations, mentioned in Notice-III. However, the Respondents are hereby strictly warned to ensure timely compliance of the regulatory framework on the subject matter, in future. The proceedings initiated through Notice III are disposed of accordingly.

g) The issue - whether or not the Respondents have acted in violation of the requirement of the Notification of 2012 and PSX Correspondence Manual, as alleged in Notice IV?

Through Notice IV, the Respondents were alleged for

- Non-submission of information to PSX about meeting in progress on October 31, 2013, and
- Non-disclosure of "partial closure of plant" pursuant to Notification of 2012.

The both issues are discussed hereunder in detail:

i) issue of non-submission of information to PSX regarding non-conclusion of board meeting held on October 31, 2013: PSX's Correspondence Manual requires the listed companies to communicate financial results on Form 7. Note 1 of the Form 7 provides that *In case the meeting is not concluded during traded hours, the company shall immediately convey through PUCARS to the stock exchange that the meeting is in progress followed by hard copy of letter of confirmation.....*

In this regard, the Respondents claimed that "PSX was duly intimated about meeting in progress". The said claim has been analyzed and observed that record of PSX showed that Company sent Notice in this regard to PSX



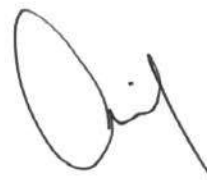
through PUCARs on October 31, 2013 at 16:04 hours, which was followed by hard copy of the information. Thus, I intend to agree with the contention that the company has duly discharged its obligation put through PSX Correspondence Manual.

- ii) **The issue of non-disclosure of inside information:-** In this regard, the Authorized Representatives contended that information "*closure of plant*" was not required to be made public pursuant to section 15D of the Ordinance because it was not a price sensitive inside information. The issued has been discussed at length in para 10(d) of the Order and it has been established that the "*partial closure of Plant*" was inside information in terms of section 15 B read with the Notification of 2012.

In view of the foregoing, I do not agree with the contention of the Respondent that "*partial closure of plant*" was not required to be disclosed pursuant to section 15D of the Ordinance. Being "inside information" as established above, it was required to be disclosed, pursuant to Section 15D(1) of the Ordinance, in the manner prescribed in aforesaid Notification of 2012, immediately upon occurrence of event. But, in the instant case, the said disclosure has not been made public immediately, in violation of Section 15D(1) of the Ordinance read with aforesaid Notification of 2012, as, the said inside information was communicated to PSX on March 10, 2014, with delay of ten-eleven months. Notwithstanding above, the disclosure made by the management of the Company on March 10, 2014 itself negates the contention of the Authorized Representatives that "*closure of plant occurred in April-May 2013 was not inside information, therefore, was not required to be disclosed under section 15D of the Ordinance*". Thus, in view of the foregoing, I am of the opinion that violation of provisions of the Notification of 2012 has been committed in the instant case.

Now I come to the issue i.e. who was privy at the time of occurrence of this inside information and was responsible for making it public? Pursuant to the aforesaid Notification, the disclosure is to be made by a person who possesses inside information. Furthermore, in pursuance of general instructions of the Notification, the disclosure form is required to be signed by Chief Executive of the Company or the Company Secretary or any other person authorized by the board. The event of damage/closure of plant was required to be made public immediately of the occurrence of the event, therefore, in my opinion, it was responsibility of the Chief Executive Officer of the Company to make it public immediately, because the Chief Executive Officer of a listed company is ultimately responsible for all day-to-day management decisions to be communicated to government authorities, other stakeholders and the public.

In view of the foregoing, the Respondent-I being Chief Executive Officer of Company was required to give disclosure of the aforesaid information, immediately of the closure of plant, but he failed to do so, in contravention of





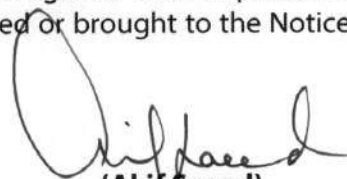
Notification of 2012. The said disclosure was made with PSX on March 10, 2014 with delay of about ten-eleven months. Contravention of the Notification of 2012 attracts penal provisions of section 22 of the Ordinance.

In view of the facts stated above, in exercise of powers conferred upon me under section 22 of the Ordinance, I hereby impose a penalty of Rs. 50,000 /- (rupees fifty thousand) on Respondent-I, for default of Non-disclosure of "partial closure of plant" pursuant to Notification of 2012, as alleged in Notice IV. The Respondent is further directed to comply with the relevant regulatory framework in letter and spirit in future.

12. The Respondents are directed to deposit the fine in the account of the Commission being maintained in the designated branches of MCB Bank Limited within 30 days of the date of this Order and furnish Original Deposit Challan to this office.

13. This Order is being issued without prejudice to any other action that the Commission or the Pakistan Stock Exchange may initiate against the Respondent in accordance with the law on matter subsequently investigated or brought to the Notice of the Commission.




(Akif Saeed)
Commissioner (SMD)

Islamabad.
Announced on March 17, 2016